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July 9, 2018

Via ECF

The Honorable Robert W. Lehrburger,  
United States District Court for the  
Southern District of New York,  
500 Pearl Street,  
New York, New York 10007-1312.

Re: *Chen-Oster, et al. v. Goldman, Sachs & Co., et ano.*  
No. 10 Civ. 6950 (AT) (RWL)

Dear Judge Lehrburger:

Pursuant to Rule I.A of Your Honor's Individual Practices, we write on behalf of Defendants Goldman Sachs & Co. LLC and The Goldman Sachs Group, Inc. to address Your Honor's question during the June 27, 2018 hearing asking "what's the standard of what has to be shown" to certify a class under Federal Rule of Civil Procedure 23. (June 27, 2018 Hr'g 15:9–12.) After I stated that the standard was a "preponderance of the evidence" (*id.* at 15:18–16:1), counsel for Plaintiffs stated that their burden was only "substantial proof" (*id.* at 31:13–17). In fact, Plaintiffs must prove every single element of Rule 23 by a preponderance of the evidence.

The Supreme Court has made clear that Plaintiffs must "*prove*—not simply plead—that their proposed class satisfies *each requirement* of Federal Rule of Civil Procedure 23." *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2403 (2014) (first emphasis in original; second emphasis added); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("Rule 23 does not set forth a mere pleading standard.").

The Second Circuit has expressly held that "the standard of proof applicable to evidence proffered to meet the requirements of Rule 23 [is] a *preponderance of the evidence*." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) (emphasis added; internal quotation marks omitted); *Teamsters Local 445 Freight Div. Pension Fund v. Bombardier Inc.*, 546 F.3d 196, 202 (2d Cir. 2008) ("Today, we dispel any remaining confusion and hold that the *preponderance of the evidence* standard applies to evidence proffered to establish Rule 23's requirements.") (emphasis added; internal quotation marks omitted).

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Accordingly, to prevail on their upcoming motion for class certification, to satisfy their burden of proof, Plaintiffs are required to demonstrate by a preponderance of the evidence that they have satisfied “*each requirement*” of Rule 23(a) and the requirements of Rule 23(b)(2).

Respectfully,

/s/ Robert J. Giuffra, Jr.

Barbara B. Brown  
of Paul Hastings LLP

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of Sullivan & Cromwell LLP

cc: Counsel of Record